91-478

No.

Supreme Court, U.S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1991

SHINCHOSHA COMPANY,
Petitioner,
VS.
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
and
SHIGETO SHIMIZU,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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QUESTIONS PRESENTED

1. Does a Japanese language publisher, located in Japan, and serving the Japanese market, which has no assets and conducts no business activity in California or elsewhere in the United States, have the requisite minimum contacts with the State of California to permit a California court to assert personal jurisdiction, where 40 copies of its Japanese language magazine that is the subject of the action were distributed in California by independent distributors?

2. Does the sale of magazines to independent distributors, where the company retains no control over or possessory interest in those copies, constitute placement of the magazine into the stream of commerce?

3. Is placement of magazines into the stream of commerce through their sale in Japan to independent distributors sufficient, without other action by the publisher and without regard to the number of copies delivered, to permit any state in which the independent distributor chooses to deliver the magazines to assert personal jurisdiction over the foreign publisher?

PARTIES TO THE PROCEEDING

All parties to the proceeding in the Court of Appeal of the State of California, Second Appellate District, are named in the caption.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

Petitioner prays that a writ of certiorari issue to review the final order of the Court of Appeal of the State of California, Second Appellate District, entered in this case on May 16, 1991.

OPINIONS BELOW

The decision of the Superior Court of the State of California, County of Los Angeles, is reproduced in Appendix A, *infra*. The decision of the Court of Appeal is reproduced in Appendix B, *infra*. The decision of the California Supreme Court is reproduced in Appendix C, *infra*.

JURISDICTION

By a final order of May 16, 1991 entered the same date, the Court of Appeal of the State of California, Second Appellate District, denied Petitioner's Petition for Writ of Mandate. On June 20, 1991, the Supreme Court of California denied Petitioner's Petition for Review. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

California Code of Civil Procedure section 410.10 states:

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

The provision of the United States Constitution involved is the Due Process Clause of the Fourteenth Amendment:

Section 1 . . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

(1) Factual Background

This is a libel case brought by a Japanese citizen temporarily residing in Los Angeles[1] (Mr. Shimizu)

[1] Mr. Shimizu is residing in the United States pursuant to a nonimmigrant treaty investor visa. Although such visa holders "need not show that they are coming to the United States for a specific, limited period of time," they still must establish that they intend to leave the United States when their visas expire. 22 C.F.R. § 41.51

against the Japanese editor (Mr. Goto) of a Japanese magazine (*Focus*) and the magazine's Japanese publisher (Shinchosha).

The allegedly defamatory article, which was written and researched in Japan, and which dealt primarily with Mr. Shimizu's investments on the Osaka (Japan) Stock Exchange, appeared in the May 26, 1989 issue of *Focus* magazine. Approximately 600,000 copies of *Focus* are published each week by Shinchosha in Japan, in Japanese, for a Japanese readership. Almost all of the 600,000 weekly copies of *Focus* are distributed and purchased in Japan. Other than a small number of issues which Shinchosha sends directly to subscribers (most of whom are in Japan and none of whom are in California), distribution of *Focus* occurs through sixteen Japanese distribution companies that are entirely independent of Shinchosha. Approximately forty (40) copies of *Focus*, or less than 1/100 of one percent, are sent to California by three of those independent companies.[2] With regard to those issues of *Focus* that are distributed in Japan, Shinchosha has an agreement that the distributors may return unsold copies, but with respect to those issues that are sent abroad, Shinchosha does not permit any returns. Thus, Shinchosha retains no possessory or consignment interest of any kind in those forty (40) copies of *Focus*, or in any other Shinchosha publication distributed outside of Japan.

Shinchosha has no meaningful contacts with California, or, for that matter, with any state in the United States.

(b)(2); 1 C. Gordon & S. Mailman, *Immigration Law & Procedure* § 12.03[1][c] at 12-17, § 17.08 at 17-46.

[2] There is no evidence in the record that prior to this lawsuit either Shinchosha or the editor of *Focus*, Mr. Goto, had any awareness that those independent companies sent any copies of *Focus* to California.

Shinchosha is the oldest major publishing house in Japan. The company was established in 1896 for the purpose of publishing serious works of literature. Shinchosha has been located in Tokyo, Japan since its founding. The company has no other offices or subsidiaries and all of its publishing activity occurs in Tokyo. Shinchosha owns no property in California, has no offices or employees in California, derives no income from California, and has never filed income tax returns or paid income taxes to the State of California. For that matter, Shinchosha has no employees or offices anywhere in the United States, and it has never filed income tax returns or paid income taxes in the United States.

Focus magazine is a department of Shinchosha and has no legal existence apart from Shinchosha. *Focus* publishes articles concerning politics, economics, the arts and matters of general social interest. Like all works published by Shinchosha, *Focus* is published in the Japanese language, and is intended exclusively for Japanese readership.

Focus decided to research, and ultimately to publish, an article regarding Mr. Shimizu after *Focus* received, unsolicited — from a free-lance photographer in Los Angeles who is neither an employee nor an agent nor a representative of Shinchosha — photographs of Mr. Shimizu and a copy of an article regarding Mr. Shimizu that had been published in a Los Angeles-based Japanese language newspaper. Apart from the unsolicited photographs and information, all of the research and writing regarding the article in question occurred in Japan. No employee of Shinchosha travelled to California, or otherwise outside of Japan, in conjunction with the preparation or publication of the article.

The May 1989 *Focus* article that is the subject of this lawsuit dealt primarily with investments Mr. Shimizu

made on the Osaka (Japan) Stock Exchange in 1985. In connection with that story, the article mentioned certain of Mr. Shimizu's activities related to California. Of the sixteen (16) allegedly "defamatory" statements contained in the article, twelve (12) have no relationship to California.

(2) Procedural Background

Despite the defendants' complete lack of meaningful contacts with California, the Los Angeles Superior Court determined on April 16, 1991, that Mr. Goto and Shinchosha were present for all purposes in California, and subject to the general jurisdiction of California courts (the Superior Court's minute order is attached as Exhibit A). The court found that jurisdiction over the "defendant" was appropriate "by virtue of . . . it's published products being sold in California."[3]

On May 3, 1991, Mr. Goto and Shinchosha submitted a petition for a writ of mandate to the Court of Appeal directing the Superior Court to quash the service of summons. The Court of Appeal issued a summary denial of that petition on May 16, 1991. (Attached as Exhibit B). On May 24, 1991, Shinchosha and Mr. Goto submitted a petition to the California Supreme Court for review of the Superior Court's denial of the motion to quash, and of the Court of Appeal's summary denial of the petition for writ of mandate. The California Supreme Court issued an

[3] Although not explicitly stated, the Superior Court appeared to base jurisdiction, in part, on the presence in California of Shinchosha publications other than *Focus* magazine. Any such publications are not only unrelated to Mr. Shimizu's cause of action, but they also constitute a small fraction of Shinchosha's total publications and, like *Focus* magazine, arrive in California solely through the independent actions of distribution companies unrelated to Shinchosha.

order on June 20, 1991 denying the petition for review and request for stay as to Shinchosha, but granting the petition and request for stay as to Mr. Goto.[4] (Attached as Exhibit C). The Court further ordered that review as to Mr. Goto be transferred to the Court of Appeal with directions to vacate its order denying mandate and to issue an alternative writ to be heard before that court.

On June 24, 1991, Shinchosha submitted to the California Supreme Court an application for stay in the Superior Court action pending the filing and determination of a petition for certiorari. The California Supreme Court, without further written order, rejected Shinchosha's application for stay, on the ground that the Court no longer had jurisdiction over the case. Shinchosha then made an ex parte application to the Superior Court for the stay, which was denied on June 26, 1991.

On June 28, 1991, Shinchosha filed a motion to dismiss in the Superior Court based on *forum non conveniens*. The Superior Court denied that motion on August 19, 1991. At a hearing on August 30, 1991, the Superior Court further ordered that Shinchosha's response to the complaint be submitted on or before September 20, 1991. Shinchosha applied to this Court on September 6, 1991 for a stay of the proceedings in the Superior Court pending this Court's disposition of this petition for certiorari. That application for stay is still pending as of the filing of this petition.

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[4] Mr. Goto lives in Tokyo, visited California only once in 1966 for three or four days, derives no income from California, and, prior to this lawsuit, was unaware that any issues of *Focus* even reached California.

REASONS FOR GRANTING THE WRIT

A writ of certiorari should be granted in this case because California courts, in asserting jurisdiction over this alien defendant, have acted in a manner that exceeds the limits of due process. There is a division among the circuits on this issue, creating a substantial likelihood that other courts will act in a similar manner. Resolving this question would eliminate the uncertainty arising from previous decisions of this Court.

I.

Basing Jurisdiction Solely on a Defendant's Awareness that its Products May Reach the Forum State Through the "Stream of Commerce" Violates Due Process.

This case raises the same issue that the Court addressed in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), but was unable to resolve: whether mere placement of a product in the "stream of commerce" may subject a defendant to personal jurisdiction in the forum State absent any showing of additional conduct by the defendant. In this case, a small number of allegedly defamatory *Focus* magazines, in which Shinchosha retained no possessory or financial interest, reached California solely through the acts of independent distributors over which Shinchosha had no control. In *Asahi*, the defendant Japanese manufacturer produced tire valve assemblies which it sold to a Taiwanese tire company. That company then incorporated the assemblies into its tires and distributed the tires throughout the world. The tire company was named as a defendant in a products liability action in California for injuries caused by its tires, and cross-claimed against Asahi for indemnity.

In *Asahi*, the court unanimously decided that the exercise of jurisdiction over the defendant would violate the Due Process Clause by "offend[ing] 'traditional notions of fair play and substantial justice.' " *Id.* at 113 (citation omitted). Because of the "severe" burden that litigation in California would place on the alien defendant, this Court concluded that jurisdiction over *Asahi* "would be unreasonable and unfair." *Id.* at 116.[5] On the alternative ground of the "stream of commerce" issue, however, the members of this Court diverged and created three separate and conflicting opinions.

Writing for four members of this Court, Justice O'Connor found either "mere placement" or "knowledge of distribution" to be an insufficient basis for asserting personal jurisdiction:

> The 'substantial connection,' . . . between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State* . . . . The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.

Id. at 112 (citations omitted) (emphasis in original). Because they found no evidence of such a "purposeful act," these four justices determined that "the exertion of personal jurisdiction over *Asahi* by the Superior Court of California exceeds the limits of due process." *Id.* at 113. By contrast, Justice Brennan concluded, in an opinion joined by three other members of this Court, that "juris-

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[5]The same "severe burden" placed on the alien defendant in *Asahi* is present here; this makes the Superior Court's decision inconsistent with *Asahi* and Shinchosha respectfully requests summary reversal.

diction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause." According to these members of the Court, no further showing of "purposeful availment" is required. *Id.* at 117.

In a third opinion, written by Justice Stevens, three justices concluded that resolution of this "stream of commerce" issue was not necessary to the Court's opinion, once the Court decided that jurisdiction was unreasonable. Even assuming the tests were relevant, these members of the Court felt that it had been misapplied. They concluded that *Asahi* had done far more than simply place its products in the stream of commerce, and that its conduct was substantial enough to constitute "purposeful availment." *Id.* at 122 ("a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute 'purposeful availment' ").

By raising the same "stream of commerce" issue again, this case provides the Court with an opportunity to clarify what was left unresolved in *Asahi*: whether it is consistent with due process to base jurisdiction solely on the defendant's potential awareness that its products may reach the forum state through the stream of commerce. Moreover, this case presents the issue even more squarely than *Asahi* did, as this defendant's relationship to California is so attenuated. The article on which this action is based was printed in *Focus* magazine in Japan, in Japanese, and directed to an exclusively Japanese readership.[6] Any distribution of *Focus* magazine outside of Japan occurs

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[6]Even if this Court were to adopt the "stream of commerce" argument, it must still determine whether the "stream of commerce" has national boundaries for jurisdictional purposes. In other words, did Shinchosha's sale of its Japanese language magazines to Japa-

through the independent activities of Japanese distribution companies. Shinchosha retains no financial or possessory interest in the magazines and the distribution companies may not return any unsold copies.

Moreover, these independent distributors send only a miniscule number of issues of *Focus* magazines to California (40 issues per week out of a total press run of 600,000). This contrasts with the defendant's deliveries in *Asahi* of "over 100,000 units annually over a period of several years," which led four members of this Court to conclude that there was "purposeful availment" in *Asahi*. *Id.* at 122 (Stevens, J., concurring in part). Because Shinchosha's only conceivable "contact" with California was its potential knowledge that a small number of its publications reached the state, this case provides an even better vehicle than *Asahi* for determining whether this knowledge, on its own, is a sufficient ground on which to base personal jurisdiction.

By presenting in sharp relief the burdens imposed on a defendant who has no direct contact with the forum state, this case also provides a persuasive example showing why "mere placement" or "knowledge of distribution" cannot be a valid basis for personal jurisdiction. In discussing the requirement of "minimum contacts," this Court has stated that "[j]urisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (emphasis in original), *quoting McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957). Where, as here, there is no evidence of purposeful acts by the defendant or of any "substantial connection" with the

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nese distributors constitute a placement of its product into the relevant "stream of commerce" for purposes of a California lawsuit?

forum state, there can be no finding of "minimum contacts." In the absence of such evidence, the exercise of jurisdiction over a nonresident is clearly unconstitutional.

In *Asahi,* this Court emphasized that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders," and advised that "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Id.* at 114-115 (citations omitted). These concerns are more likely to be ignored, as they were in the instant case, if a court chooses to base jurisdiction on the defendant's mere awareness that its products reach the forum state.

Not only does the assertion of jurisdiction over foreign defendants impose substantial burdens on them, but it implies that the foreign forum, in this case Japan, is an inadequate alternative. Such assumptions invite forum shopping on an international scale and are inconsistent with this Court's rejection in other cases of an assumption that the American forum is always preferable. *See Scherk v. Alberto-Culver Co.,* 417 U.S. 506, 517 n.11 (1974) (The idea that American standards must govern "demeans the standards of justice elsewhere in the world, and unnecessarily exalts the primacy of the United States law over the laws of other countries."); *M/S BREMEN, et al. v. Zapata Off-Shore Co.,* 407 U.S. 1, 9 (1972) ("We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.")[7]

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[7]*See also Lockman Foundation v. Evangelical Alliance Mission, et al.,* 930 F.2d 764 (9th Cir. 1991) (court found Japan to be an

II.

Jurisdiction Over an Alien Publisher for Defamation is Unreasonable When Distribution of the Allegedly Defamatory Publication in the Forum State is Minimal.

An additional, but related, issue raised by this case is whether a publisher can be sued for libel when only 40 copies of its foreign language publication are distributed in the forum state through the independent actions of third parties. In *Keeton v. Hustler Magazine,* 465 U.S. 770 (1984), this Court held that New Hampshire had a sufficient interest in preventing the "tort" of libel within its borders where a "substantial number" of Hustler magazines were sold in the state. 465 U.S. at 781.[8] The Court did not decide, however, that any number of publications, no matter how small, could subject a publisher to suit in that state.

In *Keeton,* the defendant sold, through independent distributors, approximately 10,000 to 15,000 copies of its "national publication" in New Hampshire each month. *Id.* at 772. Consequently, this Court concluded that Hustler magazine was "carrying on a 'part of its general business'

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adequate alternative forum). Should this Court find that jurisdiction over Shinchosha is improper, the Statute of Limitations on Mr. Shimizu's claim has not yet run under Japanese law.

[8]In *Keeton,* this Court also held that New Hampshire's jurisdiction was in part based on its "interest in cooperating with other States in the application of the 'single publication rule.' " 465 U.S. at 777-78. Because the defendant in this case is located in another country (thereby implicating the libel laws of that country, rather than simply the laws of another state), the Court might well conclude that the state interests articulated in *Keeton* are not present here. Indeed, the Superior Court made no finding that California law applied or that California has any interest in this dispute.

in New Hampshire," that its "regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction," and that the defendant must therefore "reasonably anticipate being haled into court here." *Id.* at 773 and 780-81.[9] In contrast, here only forty copies out of 600,000 (less than $^1/_{100}$ of one percent) copies of a Japanese language magazine arrived in California through independent distributors. Under such circumstances, it would seem that the state's interest in providing a forum would be significantly smaller than in *Keeton* and that the "minimum contacts" standard would not be met.

A consideration of the level of circulation of the allegedly defamatory publication in the forum state is consistent with the idea that the defendant must "reasonably anticipate being haled into court [in that state.]" A number of courts in California and elsewhere have cited this factor, either in terms of the total number of issues circulated in the forum state or in terms of the percentage of the total, when analyzing whether jurisdiction is proper. In *Evangelize China Fellowship, Inc. v. Evangelize China Fellowship, Hong Kong,* 146 Cal. App. 3d 440, 194 Cal. Rptr. 240 (1983), the California Court of Appeal held in a defamation case that a California court had no jurisdiction over a magazine published abroad in a foreign language where a minimal number of copies arrived in California. The defendant sent approximately seven percent (7%) of the copies of the publication to California, while the rest were distributed abroad. Because the

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[9]Likewise, in *Calder v. Jones,* 465 U.S. 783, 785 (1983), another defamation case decided the same day as *Keeton,* this Court found jurisdiction over a reporter and editor of *The National Enquirer* to be proper where the allegedly defamatory publication was a "national weekly newspaper with a total circulation of over 5 million."

vast majority of copies of the defendant's magazine were circulated outside of California, the court found that jurisdiction would offend due process.

Likewise, in *Church of Scientology of California v. Adams,* 584 F.2d 893 (9th Cir. 1978), the Ninth Circuit Court of Appeals determined that "the defendant had little reason to expect a risk of injury from defamation in [California]" based on the defendants' knowledge that no more than 150 issues — 4/100 of 1% of total circulation — would be distributed in that state.[10] *See also Sipple v. Des Moines Register & Tribune Co.,* 82 Cal. App. 3d 143, 147 Cal. Rptr, 59 (1978) (no jurisdiction where each of the newspapers in question had a circulation in the forum state of less than 3/10 of 1% of total circulation).

Clearly, these courts interpreted the requirement that the publisher circulate a "substantial number" of its publications in the forum state in a manner that is vastly different than the Superior Court's decision in the instant case. Based on the minimal level of distribution of the

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[10] Cases that permitted the exercise of jurisdiction found significantly more circulation than at issue here. *See Army Times Publishing Co. v. Watts,* 730 F.2d 1393, 1399-1400 (11th Cir. 1984) (court found sufficient contacts with Alabama existed where defendant had "nationwide publishing operation" and "national marketing service," and Alabama was "a significant market, if not one of several principal markets, for the newspaper"); *Samad v. High Society Magazine,* 10 Med. L. Rptr. 1930, 1931 (D.V.I. 1984) (court found sufficient contacts with Virgin Islands existed where population was only 100,000 and circulation in Islands was 275, making distribution "quite substantial relative to the population of this territory," unlike "populous jurisdictions such as New York and California"); *Akbar v. New York Magazine,* 490 F. Supp. 60 (D.D.C. 1980) (court found sufficient contacts with District existed where magazine distributed approximately 3,000 issues per week in District, constituting 0.7% of total circulation).

allegedly defamatory publications in those cases, the courts found jurisdiction to be unreasonable. Jurdisdiction in this case is similarly unwarranted.

III.

The Unresolved Issues In *Asahi* and *Keeton* Create Confusion Among Courts in Judging Whether "Minimum Contacts" Exist.

Asahi and *Keeton* left open the question of how much contact with the state is enough to assert jurisdiction. These cases have created uncertainty in this area of the law, permitting courts to assert jurisdiction over nonresidents based on the most minimal of contacts. Although the scope of personal jurisdiction continues to be a critical issue for American courts, this uncertainty leaves unresolved the confusion among the circuits. Prior to *Asahi,* courts differed over the scope of the "minimum contacts" required to allow the exercise of jurisdiction. *See Asahi,* 480 U.S. at 110-12, and 117-18 (discussing the Fifth and Ninth Circuit Courts of Appeals' adoption of a rule permitting jurisdiction to be based on "mere foreseeability or awareness," and the Eighth Circuit Court of Appeals' rejection of that rule). The difference among the circuits has not only persisted since *Asahi,* but has expanded.[11]

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[11]The following cases either expressly or impliedly adopt the "mere foreseeability" rule: *Irving v. Owens-Corning Fiberglass Corp.,* 864 F.2d 383, 384-387 (5th Cir. 1989), *cert. denied,* 110 S. Ct. 83 (1989); *In re San Juan Dupont Plaza Hotel Fire Lit.,* 742 F. Supp. 717, 722 (D. Puerto Rico 1990); *Hall v. Zambelli,* 669 F. Supp. 753, 756 (S.D. W. Va. 1987). The following cases have required more than "mere foreseeability": *Morris v. SSE, Inc.,* 843 F.2d 489, 493-94 (11th Cir. 1988); *Tomashevsky v. Komori Printing Machinery Co., Ltd.,* 715 F. Supp. 1562, 1566 (S.D. Fla. 1989); *Smith v. Dainichi Kinzoku*

This conflict between the circuits has resulted from the uncertainty in this area of the law, leaving defendants in similar circumstances to be treated differently based solely on the state seeking to assert jurisdiction. This uncertainty is particularly troubling when the defendants are foreign nationals, as the assertion of jurisdiction over those defendants can affect international relations and trade.

This case not only deserves attention because it raises issues left unresolved by *Asahi* and *Keeton*, but also because this particular situation is likely to recur. With the growth in international commerce, it is fair to assume that there will be an increasing number of cases such as this, where an independent third party causes incidental distribution of an alien defendant's product in the forum State. If this Court does not resolve the issue of whether a defendant's mere awareness of this distribution, without more, can subject it to jurisdiction in the forum state, the courts will continue to reach conflicting results.

Kogyo Co., 680 F. Supp. 847, 854 (W.D. Tex. 1988); *Sturgill v. Chema Nord Delekkemi Nobel Indus.*, 687 F. Supp. 351, 353-54 (S.D. Ohio 1988). *See generally* Murphy, *Personal Jurisdiction and the Stream of Commerce Theory: A Reappraisal and a Revised Approach*, 77 Ky. L. J. 243, 275-83 (1989)

CONCLUSION

For the foregoing reasons we respectfully submit that the Court should grant a writ of certiorari to review the decision of the Supreme Court of California.

Respectfully Submitted,

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Shinchosha Company

APPENDIX A

APPENDIX A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Date: April 16, 1991
Honorable ROBERT H. O'BRIEN, Judge
Ellis Fajardo, Court Attendant
Darolyn Jensen, Deputy Clerk
None, Reporter

BC 002 057
SHIGETO SHIMIZU
Counsel for Plaintiff:
No Appearances
FOCUS MAGAZINE, ET AL
Counsel for Defendant:

NATURE OF PROCEEDINGS:
RULING ON MOTION OF DEFENDANT SHINCHOSHA CO. TO QUASH SERVICE OF SUMMONS

Above motion, taken under submission on 4-12-91, is hereby ruled on as follows:

Plaintiff has the burden of establishing jurisdiction by preponderance of evidence. *Wilson vs. Eddy*, 2 Cal. App. 3d, 613, 617.

Plaintiff has presented declarations supporting his contention. The declarations generally go toward establishing the number of copies of FOCUS Magazine sold or presented in Southern California. Leaving aside the obvious hearsay statements as to what was told the declarants, (Inoue and Rikimaru), they do establish, by the declarants personally having seen, that a substantial

number of defendant's publications were carried by California bookstores (paragraph 3 of Inoue 2-15-91 declaration; paragraphs 3-5, 7, Rikimaru declaration). Further, plaintiff has shown that FOCUS Magazine, the subject of this lawsuit, is sold in California (paragraph 6 of Rikimaru declaration; Response to Request for Admissions #6) by virtue of the fact defendant does sell a substantial number of publications in California, including FOCUS Magazine.

Unlike *Evangelize China Fellowship, Inc. v. Evangelize China Fellowship*, 146 Cal. App. 3d 440, defendant does business in California in a broad manner, to wit, as a publisher it sells its product (albeit through intermediate distributors) in the usual stream of business manifested by the product reaching the penultimate destination, the book store. Defendant is in the business of selling books and magazines and is aware of the world wide distribution of its products (Umeda declaration). It publishes and sells by using as apparent systematic business process whereby its products are distributed inside and outside Japan (paragraph 3 of Umeda declaration). The fact its product reaches the bookstores in California is not surprising and manifests its wide ranging business activities.

Evangelize China Fellowship, Inc. relied on authorities where only a few copies of a single publication of defendant reached California, no research was done in California, and little of California residents were made. See *Evangelize* at 448-449.

Here, although only a few copies of FOCUS Magazine reach California, defendant's business in Calfornia is much broader by virtue of more of it's published products being sold in California. The subject article specifically concerned a Calfornia resident. The accompanying photo-

graph of plaintiff was obviously taken in California, presumably by an agent or representative of defendant. (4-10-91 declaration of Shimizo, paragraph 4). This is not a situation where defendant's California activities are occasional. Defendants' activities in California are wide ranging. The fact that a substantial percentage of FOCUS Magazines are not sole in California is not determinative. That fact is only one factor in evaluating defendant's business contacts here.

In evaluating the "relationships among the defendant, the forum and the litigation", the court concludes that exercise of California jurisdiction is consistent with due process of the law. See *Evangelize* at 445.

The motion is denied. Defendants to respond to the complaint no later than 4-26-91. Status conference is set for 5-31-91 at 8:00 a.m. in Department 62.

Copies of this minute order are sent by U.S. Mail this date addressed as follows:

LAW OFFICES OF PETER A. SCHEY
256 S. OCCIDENTAL BLVD.
LOS ANGELES, CA 90057

MORRISON & FOERSTER
333 S. GRAND, 38TH FLOOR
LOS ANGELES, CA 90071-3168

Minutes Entered: April 16, 1991

APPENDIX B

APPENDIX B

B058208

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SHINCHOSHA CO. and AKIO GOTO,
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent,

SHIGETO SHIMIZU,
Real Party in Interest.

(L.A.S.C. No. BC 002057)
(Robert H. O'Brien, Judge)

ORDER

Court of Appeal, Second District Filed May 16, 1991.
Robert N. Wilson, Clerk
P. Doyon, Deputy Clerk

THE COURT*:

The petition for writ of mandate/stay, filed May 3, 1991; and the opposition thereto, filed May 10, 1991, have been read and considered.

The petition is denied.

*SPENCER, P.J.
ORTEGA, J.
VOGEL, J.

APPENDIX C

APPENDIX C

No. 2/1 B058208-S021166

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SHINCHOSHA COMPANY and AKIO GOTO,
Petitioners
v.
SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,
Respondent
SHIGETO SHIMIZU,
Real Party in Interest

Supreme Court Filed June 20, 1991.

Robert Wandruff, Clerk, Deputy

The petition for review and request for stay brought by Shinchosha Company are DENIED.

The petition for review brought by Akio Goto is GRANTED. Review as to Akio Goto is transferred to the Court of Appeal, Second Appellate District, Division One, with directions to vacate its order denying mandate and to issue an alternative writ to be heard before that court when the proceeding is ordered on calendar.

Pending further order of the Court of Appeal, all proceedings against Akio Goto in Los Angeles County Superior Court case number BC002057, entitled Shimizu v. Focus Magazine et al. are hereby stayed.

Arabian
Acting Chief Justice

Mosk
Associate Justice

Broussard
Associate Justice

Panelli
Associate Justice

Kennard
Associate Justice

Baxter
Associate Justice

Associate Justice